

CONTRACT #15
RFS # 332.01-42108
FA # Pending

**Tennessee Higher Education
Commission (THEC)**

VENDOR:
Walker and Associates



RICHARD G. RHODA
Executive Director

PHIL BREDESEN
Governor

STATE OF TENNESSEE
HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-6230
www.state.tn.us/thec/

RECEIVED

APR 05 2010

FISCAL REVIEW

MEMORANDUM

TO: Leni Chick, Fiscal Review Committee

FROM: Will Burns, Associate Executive Director, Legal and Regulatory Affairs

DATE: April 1, 2010

SUBJECT: Non-Competitive Contract Amendment Summary
Walker and Associates – Fiscal Analysis

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive amendment request to its contract with Walker and Associates for the provision of increasing educational expectations and enhancing the academic preparation of GEAR UP TN students; improving high school graduation rates and providing effective professional development for classroom teachers.

Pursuant to the request of the Fiscal Review Committee, THEC is providing the information below.

Actual Expenditures Anticipated in Each Year of the Contract

Background and Objectives: To aid THEC in its charge to increase the quality and quantity of college access related information and services for Tennessee students in its GEAR UP TN campaign THEC was awarded a College Access Challenge Grant. To achieve these goals, the Contractor shall provide the following services to improve student and parent knowledge and understanding of postsecondary education, access and opportunities.

The Contractor shall develop and produce media and collateral materials that further promote the unified statewide message of the current GEAR UP TN college access campaign. Media shall include, but not be limited to; photo shoots for bulletin boards and other categories of distribution, television spots, viral videos (a video that becomes popular through the process of Internet sharing, typically through internet media sharing websites), financial aid

brochures, standing display for outreach visits and other meeting opportunities, and a Web logo design.

Additionally, the Contractor shall use these materials to promote CollegeforTN.org, a website administered by THEC for students, high school counselors, teachers, and other school personnel, to promote relating the information learned in schools, personal interests, and life experiences to careers, can help the student be academically prepared and understand the need for advanced education.

The Contract term is April 29, 2008 through April 28, 2013 for a total contract value of \$1,500,000 with an additional \$540,000 in additional funding for a total contract maximum expenditure of \$2,040,000.

Justification for Non-Competitive Contract:

Walker and Associates has led the call to action campaign CollegeforTN with TV, radio, brochures, direct mail, and other media, and as such there will be little or no development and "branding" costs associated with this initiative.

CollegeforTN.org Outreach Activities

- CollegeforTN.org training sessions / workshops in 2009—37
- Parents / students reached via TSAC Outreach Specialists' financial aid presentations (which includes CollegeforTN.org info)—33,654
- High school counselors reached via National Training for Counselors and Mentors (NT4CM) hosted by TSAC—391
- CollegeforTN.org collateral materials sent to 500 high school counseling offices
- The CollegeforTN.org counselor listserv includes 828 high school counselors and directors of counseling with whom we regularly communicate
- College financial aid administrators reached via TSAC's annual series of financial aid workshops--231
- Over 300,000 direct mail post cards targeting parents sent to Tennessee households promoting college access and CollegeforTN.org
- Over 35,000 radio and television spots have aired pointing Tennesseans to CollegeforTN.org while promoting a message of college access

College Access Outreach Campaign

BROADCAST MEDIA

FY 08/09	
TV	3,064 spots
Radio	17,020 spots
FY 09/10	
TV	1,231 spots
Radio	16,376 spots

ONLINE PROGRAM "mind2it.com"

Total Visits	257,099
Total Visits from within TN	133,930
MySpace Friends	6,451
Facebooks Fans	223
Click Throughs to CollegeforTN.org	2,854

PRINTED MATERIALS

"Prepare" Brochure	64,000
Student Standee with Brochures	750
Direct Mail Parent Post Cards	319,000
CollegeforTN.org Application Week Stickers	20,000
McDonald's Tray Liners	18,000

Explanation provided if not submitted prior to sixty days of start date of Contract:

Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for not allowing a sixty day advance notice.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs		*Contact Phone:	615-741-3605	
*Original Contract Number:	FA-08-24644-00		*Original RFS Number:	33201-42108	
Edison Contract Number: <i>(if applicable)</i>	9929		Edison RFS Number: <i>(if applicable)</i>	33201-42108	
*Original Contract Begin Date:	April 28, 2008		*Current End Date:	April 28, 2013	
Current Request Amendment Number: <i>(if applicable)</i>			ONE		
Proposed Amendment Effective Date: <i>(if applicable)</i>			April 1, 2010		
*Department Submitting:			Higher Education		
*Division:			Tennessee Higher Education Commission (THEC)		
*Date Submitted:			April 5, 2010		
*Submitted Within Sixty (60) days:			No		
If not, explain:			Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for not providing a sixty day advance.		
*Contract Vendor Name:			Walker and Associates		
*Current Maximum Liability:			\$1,500,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2008	FY: 2009	FY: 2010	FY: 2012	FY 2013	FY
\$68,000	\$619,750	\$270,750	\$270,750	\$270,750	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2008	FY: 2009	FY: 2010	FY: 2011	FY 2012-13	FY
\$ 54,000	\$ 298,604	\$ 581,187	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			THEC was charged with the mandate of the College Access Challenge Grant to spend the grant monies by August 2010.		
IF surplus funds have been carried forward, please give the reasons			NA		

Supplemental Documentation Required for
Fiscal Review Committee

and provide the authority for the carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		NA	
*Contract Funding Source/Amount:	State:		Federal: \$2,040,000
Interdepartmental:		Other:	
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award?			

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Document ID (REQUIRED)	Stars Document Suffix	Stars CL Account	Document Description (REQUIRED)	Start Date (REQUIRED)	End Date (REQUIRED)	Stars Vendor ID (REQUIRED)	Stars Vendor No Suffix	Vendor Name (Lookup)	Stars Doc Amount	Stars Doc Adjustments	Start Doc Liquidations	Stars Amount
F0052644		9450	042908 GEAR UP TN	4/29/2008	4/29/2008	VENORNG	00	VENORNG WALKER AND ASSOCIATES	14,000.00	ADJUSTMENT 619,750.00	14,000.00	281,145.95
F0052644		9450	042908 GEAR UP TN	4/29/2008	4/29/2008	VENORNG	00	VENORNG WALKER AND ASSOCIATES	14,000.00	ADJUSTMENT 619,750.00	14,000.00	281,145.95

Header

Process	General Contract	Add Comments	Activity Log
Option:		Contract Activities	Document Status
Vendor:	WALKER & A-001	Primary Contact Info	Thresholds & Notifications
Vendor ID:	0000094812 Walker And Associates	Contract Agreement	Renewals/Extensions

Begin Date:

Amount Summary

Maximum	812,250.00	USD
Amount:		
Line Released:	581,187.39	
Open Item Relsd:	0.00	
Total Released	581,187.39	
Amount:		

Remaining Amount: 231,062.61

Remaining Percent: 28.45

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	33201-42108		
2) Procuring Agency :	TENNESSEE HIGHER EDUCATION COMMISSION (THEC)		
EXISTING CONTRACT INFORMATION			
3) Service Caption :	Increase educational expectations and enhance the academic preparation of GEAR UP TN students; improve high school graduation rates and provide effective professional development for classroom teachers.		
4) Contractor :	Walker and Associates		
5) Contract #	FA-08-24644-00		
6) Contract Start Date :	April 29, 2008		
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	April 28, 2013		
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ \$1,500,000.00		
PROPOSED AMENDMENT INFORMATION			
9) Amendment #	ONE		
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	April 1, 2010		
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	April 28, 2013		
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 2,040,000.00		
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service		
14) Description of the Proposed Amendment Effects & Any Additional Service :			
The Contractor shall develop and produce media and collateral materials that further promote the unified statewide message of the current GEAR UP TN college access campaign. Media shall include, but not be limited to; photo shoots for bulletin boards and other categories of distribution, television spots, viral videos (a video that becomes popular through the process of Internet sharing, typically through internet media sharing websites), financial aid brochures, standing displays for outreach visits and other meeting opportunities, and a Web logo design.			
15) Explanation of Need for the Proposed Amendment :			
THEC was awarded a College Access Challenge Grant to aid in its charge to increase the quality and quantity of college access related information and services for Tennessee students in its GEAR UP TN campaign.			
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)			

Ceil Walker Norris
President/CEO
Walker and Associates
5100 Poplar Avenue -- Suite 2812
Memphis, TN 38137

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... ☒ Not Applicable to this Request ☐ Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... ☒ Not Applicable to this Request ☐ Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... ☒ Not Applicable to this Request ☐ Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Walker and Associates has led the call to action campaign CollegeforTN with TV, radio, brochures, direct mail, and other media, and as such there will be little or no development and "branding" costs associated with this initiative.

21) Justification for the Proposed Non-Competitive Amendment :

To aid THEC in its charge to increase the number of outreach activities on college preparedness, financial aid, and admissions processes, and reach need-based and first-generation college students, that are completed by TSAC Outreach Specialists through the College Access Challenge Grant in the short time allotted by the grant.

AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



4.5.10

RICHARD G. RHODA, EXECUTIVE DIRECTOR



CONTRACT AMENDMENT

Agency Tracking # 33201-42108-	Edison ID 9929	Amendment # ONE
Contractor Walker and Associates		Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 62-0730469

Amendment Purpose/ Effects

Increase educational expectations and enhance the academic preparation of GEAR UP TN students; improve high school graduation rates and provide effective professional development for classroom teachers.

Contract Begin Date April 28, 2008	Contract End Date April 28, 2013	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) 84.334		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008		\$ 68,000.00			\$ 68,000.00
2009		\$619,750.00			\$619,750.00
2010		\$540,750.00			\$540,750.00
2011		\$540,750.00			\$540,750.00
2012		\$270,750.00			\$270,750.00
TOTAL:		\$2,040,000.00			\$2,040,000.00

— COMPLETE FOR AMENDMENTS —			James R. Vaden, Associate Executive Director of Fiscal Affairs 615.741.7575	
END DATE AMENDED? <input type="checkbox"/> YES <input type="checkbox"/> NO			Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) 	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY		
2008	\$ 68,000.00	-0-		
2009	\$619,750.00	-0-		
2010	\$270,750.00	\$270,000.00		
2011	\$270,750.00	\$270,000.00		
2012	\$270,750.00	-0-		
TOTAL:	\$1,500,000.00	\$540,000.00	Speed Code	Account Code

— OCR USE —

Procurement Process Summary (non-competitive, FA- or ED-type only)

To aid THEC in its charge to increase the number of outreach activities on college preparedness, financial aid, and admissions processes, and reach need-based and first-generation college students, that are completed by TSAC Outreach Specialists through the College Access Challenge Grant in the short time allotted by the grant.

Walker and Associates has led the call to action campaign CollegeforTN with TV, radio, brochures, direct mail, and other media, and as such, there will be little or no development and "branding" costs associated with this initiative.

AMENDMENT ONE
TO
FA-08-24644-00

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and Walker and Associates, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The following provision is added as Contract Section A.11 College Access Challenge Grant:

A.11. College Access Challenge Grant. To aid THEC in its charge to increase the quality and quantity of college access related information and services for Tennessee students in its GEAR UP TN campaign THEC was awarded a College Access Challenge Grant. To achieve these goals, the Contractor shall provide the following services to improve student and parent knowledge and understanding of postsecondary education, access and opportunities.

The Contractor shall develop and produce media and collateral materials that further promote the unified statewide message of the current GEAR UP TN college access campaign. Media shall include, but not be limited to; photo shoots for bulletin boards and other categories of distribution, television spots, viral videos (a video that becomes popular through the process of Internet sharing, typically through internet media sharing websites), financial aid brochures, standing display for outreach visits and other meeting opportunities, and a Web logo design.

Additionally, the Contractor shall use these materials to promote CollegeforTN.org, a website administered by THEC for students, high school counselors, teachers, and other school personnel, to promote relating the information learned in schools, personal interests, and life experiences to careers, can help the student be academically prepared and understand the need for advanced education.

Outreach success will be measured by the number and type of materials supplied to individual schools and school systems.

2. The text of Contract Section C.1 Maximum Liability is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed TWO MILLION FORTY THOUSAND DOLLARS (\$2,040,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective on the date of final approval by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

WALKER AND ASSOCIATES:

<u>Cecil Walker Norris</u>	<u>3.31.2010</u>
CECIL WALKER NORRIS, PRESIDENT, CEO	DATE
<u>Cecil WALKER NORRIS</u>	<u>CEO</u>
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

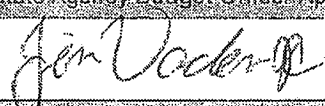
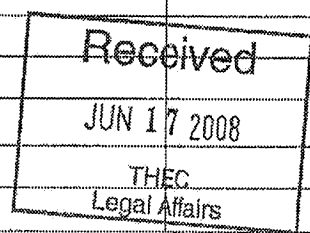
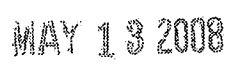
TENNESSEE HIGHER EDUCATION COMMISSION:

<u>Richard G. Rhoda</u>	<u>4.5.10</u>
RICHARD G. RHODA, EXECUTIVE DIRECTOR	DATE

CONTRACT SUMMARY SHEET

021908

RFS #				Contract #			
332.01 — 421 — 08				FA-08-24644-00			
State Agency				State Agency Division			
Tennessee Higher Education Commission				Legal and Regulatory Affairs			
Contractor Name				Contractor ID # (FEIN or SSN)			
Walker and Associates				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-		62-0730469	
Service Description							
Increase educational expectations and enhance the academic preparation of GEAR UP TN students; improve high school graduation rates and provide effective professional development for classroom teachers.							
Contract Begin Date		Contract End Date		SUBRECIPIENT or VENDOR?		CFDA #	
April 29, 2008		April 28, 2013		Vendor		84.334	
Mark Each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
332.01		0513		083		25	
Funding Grant Code		Funding Subgrant Code		Funding Grant Code		Funding Subgrant Code	
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2008		\$68,000.00			\$68,000.00		
2009		\$619,750.00			\$619,750.00		
2010		\$270,750.00			\$270,750.00		
2011		\$270,750.00			\$270,750.00		
2012		\$270,750.00			\$270,750.00		
TOTAL:		\$1,500,000.00				\$1,500,000.00	

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	James R. Vaden, 1900 Parkway Towers, 741-3605		
			State Agency Budget Officer Approval		
					
			Funding Certification (Certification required by T.O.A. 5-9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
					
TOTAL					
End Date					

Contractor Ownership (complete for ALL base contracts — N/A to amendments or delegated authorities)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other	
Contractor Selection Method (complete for ALL base contracts — N/A to amendments or delegated authorities)					
<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *			
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	<input type="checkbox"/> Other *			
* Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)					

OCR
 MAY 12 2008
 RECEIVED

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE HIGHER EDUCATION COMMISSION
AND
WALKER AND ASSOCIATES**

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission, hereinafter referred to as the "State" and Walker and Associates, hereinafter referred to as the "Contractor," is for the provision of the creation of a broad based public outreach campaign to encourage college access, as further defined in the "SCOPE OF SERVICES."

The Contractor is FOR-PROFIT CORPORATION.

Contractor Federal Employer Identification or Social Security Number: 62-0730469

Contractor Place of Incorporation or Organization: Memphis, Tennessee

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. Reasons for Intervention. Economically disadvantaged students in Tennessee are not enrolling in higher education at the rate of their peers. In 2004-05, 48 percent of all Tennessee high school graduates were estimated to continue on to college enrollment¹. In that same year, 21 percent of all economically disadvantaged college-aged students in Tennessee were estimated to be enrolled in higher education². For Tennessee to compete in an increasingly national and international market, a better educated workforce across all socioeconomic levels is essential.
- A.3. Background and Program Characteristics. In September 2005, the U.S. Department of Education awarded a \$21 million federal grant (\$3.5 million annually for six years), known as Gaining Early Awareness & Readiness for Undergraduate Programs (GEAR UP), to the Tennessee Higher Education Commission. GEAR UP TN is designed to increase the number of low-income, underserved students enrolling and succeeding in postsecondary education. Through the creation and implementation of early intervention programs, enhanced academic assessments and a broad-based public awareness campaign, GEAR UP TN has the following goals:
- 1.) Increase educational expectations of GEAR UP TN students and their families through an expanded knowledge of postsecondary access and financial aid opportunities.
 - 2.) Enhance the academic preparation of GEAR UP TN students to improve high school graduation rates and postsecondary enrollment, retention and completion.
 - 3.) Provide effective professional development for classroom teachers and school staff to ensure increased academic rigor and postsecondary preparation.
 - 4.) Encourage community engagement through GEAR UP TN to sustain an environment that supports college access and life-long learning.

¹ Tom Mortenson, postsecondary opportunity

² Ibid

GEAR UP TN directly serves students in Campbell, Cocke, Grundy, Hardeman, Johnson, Lake, Meigs, Union and Wayne counties. All Tennessee students will be served through GEAR UP TN's statewide public awareness campaign.

A.4. Objectives.

- A.4.1. Increase student educational aspiration;
- A.4.2. Increase parent and student expectations of educational attainment;
- A.4.3. Create an attitude shift among students about the "coolness" of education;
- A.4.4. Inform target audiences about academic preparation required for college;
- A.4.5. Correct misperceptions about the cost of postsecondary education;
- A.4.6. Provide information about the actual cost of postsecondary education;
- A.4.7. Inform target audiences about federal and state financial aid opportunities; including the Tennessee Student Assistance Award and the Tennessee Education Lottery Scholarship program;
- A.4.8. Foster and improve parental involvement in preparing children for college;
- A.4.9. Help teachers and counselors academically prepare their students for college;
- A.4.10. Prevent teachers from limiting students based on assumptions of student capabilities;
- A.4.11. Increase educational expectations of students among school faculty; and
- A.4.12. Inform teachers and counselors of the many resources available to help prepare students for college.

A.5. Target Audiences. Services provided by the Contractor will help GEAR UP TN increase college access and success awareness through the creation and implementation of a strategic, statewide communication campaign that targets the listed audiences.

- A.5.1. The primary target audiences of the GEAR UP TN campaign are:
 - A.5.1.a. Tennessee 7th–12th grade students, especially first-generation students and underserved, low-income students
 - A.5.1.b. Parents of Tennessee students in 7th–12th grade, especially the economically disadvantaged
 - A.5.1.c. Educators of Tennessee students in 7th–12th grade
- A.5.2. Secondary target audiences of the GEAR UP TN campaign are:
 - A.5.2.a. Tennessee government, Governor, senators and representatives
 - A.5.2.b. Adults with influence in 7th–12th grade students' lives (community and faith-based leaders, coaches, youth organization leaders, mentors, tutors, etc.)
 - A.5.2.c. College students (retention)

A.6. Detail of Services to be Provided.

- A.6.1. The Contractor will provide the State with annual one-year strategic, statewide communication plans.
 - A.6.1.a. The communication plans will address the aforementioned GEAR UP TN goals and objectives while also addressing sustainability.
 - A.6.1.b. The year-one communication plan will be based on primary research (done by Contractor regarding this campaign) and secondary research (published research done by third parties) of the target audiences.
 - A.6.1.c. A new one-year plan must be developed and implemented each year; annual plans (following year one) will be based on data gathered from completed campaign(s) evaluations.
- A.6.2. The Contractor will conduct primary research, a pre-campaign public awareness survey, and will also be responsible for gathering secondary research.

- A.6.2.a. Data collected from this research will be used to make recommendations on media buys, outlining different media channels' effectiveness with the target audiences.
- A.6.2.b. Data collected from this research will be used to strategize, write and develop the annual communication plans, especially year-one.
- A.6.3. The Contractor will design, develop and produce non-print media for the campaign including television, radio, movie theaters, etc. that reach the target audiences.
 - A.6.3.a. The Contractor will be responsible for all details involving the development and production of advertisements. This includes writing script, hiring talent, obtaining talent buyout, art production, filming, editing, and any other aspects associated with development and production of advertisements.
 - A.6.3.b. Advertisements will showcase a variety of ethnicities.
 - A.6.3.c. The Contractor shall arrange for duplication and distribution of non-print media.
 - A.6.3.d. The Contractor shall ensure continued availability of non-print media and creative materials regarding the campaign.
- A.6.4. The Contractor will conduct on-going evaluation of the campaign and provide quarterly reports.
 - A.6.4.a. The Contractor will conduct focus groups and concept tests to ensure campaign messages and ideas will create the desired attitude and behavioral changes among target audience members.
 - A.6.4.b. The Contractor will conduct copytesting on all developed media to ensure the pieces resonate with target audience members and accurately present the message(s).
 - A.6.4.c. Testing is expected to capture the views of urban and rural sectors of the target audiences.
 - A.6.4.d. The reports will include suggested campaign revisions based on the results of the on-going evaluations.
- A.6.5. The Contractor will conduct media buys and provide reports of media placement (paid and free).
 - A.6.5.a. Based on research, the Contractor will recommend a cost-effective media mix (included in the communication plans) to reach the target audiences and maximize the effectiveness of the campaign. The State will make the final determination of the amount of media purchased.
 - A.6.5.b. Upon State approval of each media buy, the Contractor will negotiate the best possible rates for media buys, including for each minute of air time purchased, the Contractor will negotiate to receive an equal amount of free air time.
 - A.6.5.c. The Contractor will track and monitor media placement (paid and free) and provide the State with quarterly reports. These reports will also include media post-buy analyses verifying that reach and frequency goals (established in the communication plans) are met.
- A.6.6. The Contractor will develop and produce print materials and collateral materials that further support the campaign and its messages.
 - A.6.6.a. The Contractor will provide the State with classroom materials such as DVDs and workbooks that encourage students to enroll and succeed in postsecondary education. These materials may also be used by businesses and community organizations.

A.6.6.b. The Contractor will provide the State with parent communication materials that explain the importance of postsecondary education and the necessary steps to get there.

A.6.6.c. The Contractor will negotiate and conduct purchases of educational supplies such as folders, notebooks and writing utensils that are needed to support tactics of the communication plans.

A.6.7. The Contractor will provide the State with annual evaluation reports of the communication campaign.

A.6.7.a. The annual evaluation reports should include related media statistics (paid vs. free), reach and frequency numbers, changes in public awareness, attitude changes and behavioral changes among target audience members, clipping counts, etc. for each year.

A.6.8. The Contractor will provide the State with a final evaluation report of the communication campaign.

A.6.8.a. The final evaluation report should include related media statistics (paid vs. free), reach and frequency numbers, changes in public awareness, attitude changes and behavioral changes among target audience members, clipping counts, etc. for the entire campaign. The final evaluation report should highlight the pre-campaign vs. post-campaign statistics.

A.7. Inputs. All communication strategies/tactics/efforts/services/media buys provided by the Contractor are subject to the approval of the THEC representative, GEAR UP TN public relations specialist. The THEC representative will serve as the project director.

In addition to GEAR UP TN and THEC, the Contractor must collaborate with the University of Tennessee Institute of Assessment and Evaluation, Tennessee Student Assistance Corporation, the Tennessee Department of Education, the Tennessee Diploma Project within the Governor's planning office and any third party groups working with one of these agencies when creating, designing and implementing all communication strategies, tactics and creatives. These groups have similar goals and aim to align their messages in order to create top of mind awareness and create attitude and behavior changes. These groups will assist in delivering communication materials to target audiences.

The Contractor will consider existing college access information strategies currently being conducted by GEAR UP TN, such as KnowHow2Go and the Passport to Opportunity, when developing the communication plan. GEAR UP TN is dedicated to linking all mass communication to reference group communication, increasing receiver awareness while also encouraging further discussion of the message among peer groups.

The Contractor will also consider GEAR UP TN's responsibility to collaborate with the GEAR UP partnership grants in Tennessee. The four current partnership grants include GEAR UP East Tennessee State University, GEAR UP University of Tennessee at Chattanooga, GEAR UP Bradley/Walker, and GEAR UP Memphis City Schools. Any future partnership grants will also be included.

CollegeforTN.org is Tennessee's one-stop college shop that allows students to plan, prepare, pay and apply for college. This is the Web site to which students and parents will be directed. All collateral materials will include this Web site address.

- A.8. Activities. Within five days of the signing of the contract, the Contractor and THEC representatives will schedule a timely planning meeting. After this meeting, the Contractor will prepare a draft of the year-one communication plan.

Within 45 days of receipt of the signing of the contract, representatives (no more than 2 per agency) from the state agencies listed in A.7. will meet with the Contractor to review an initial draft of the year-one communication plan, including a broad timeline, goals, objectives and strategies.

Within 20 days of the initial draft meeting, the Contractor will present a final draft of the strategic, statewide campaign plan to the aforementioned group representatives.

Upon THEC approval of the final draft of the plan, the Contractor will immediately begin implementation of the campaign.

A new one-year plan will be developed and implemented each year. Annual plans will be based on data gathered from completed campaign(s) research.

The Contractor must be able to provide THEC with hands-on review and approval of developed campaign materials.

The Contractor must meet with THEC bi-monthly or as needed by the activities and components of the campaign. A report on the successes and challenges of strategies and tactics used will be provided along with recommendations for change if needed and/or requested by THEC.

- A.9. Intended Outputs. The Contractor is expected to develop and execute targeted college access and success information strategies for the target audiences listed in A.5. Widespread exposure to campaign messages is necessary in order to get attention, create awareness and create attitude and behavior changes.

THEC reserves the right for final approval of all materials. All materials must be easy to understand and must not exceed a 6th grade reading level. The Contractor will develop/select a methodology for testing printed materials for adherence to this literacy standard. THEC will pre-approve the methodology.

- A.10. Intended Outcomes. The overall outcomes for this campaign are to:
- o Better educate Tennessee students, parents, educators, business leaders and community members about the importance higher education
 - o Increase the number of economically disadvantaged, underserved students enrolling and succeeding in college
 - o Increase the number of students participating in financial aid opportunities

Today's increasingly competitive knowledge-based economy boasts a growing pool of jobs that require postsecondary education, creating the need for interventions that increase education's expectations, enhance academic preparation and encourage community engagement.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on April 29, 2008 and ending on April 28, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Five Hundred Thousand (\$1,500,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

(1) Research, Plans and Reports.

Research, Plans and Reports	Year 1 April 29, 2008 – April 28, 2009	Year 2 April 29, 2009 – April 28, 2010	Year 3 April 29, 2010 – April 28, 2011	Year 4 April 29, 2011 – April 28, 2012	Year 5 April 29, 2012 – April 28, 2013
Initial Research and Strategy Development (A.6.2.)	\$76,000				
On-going Campaign Evaluation and Reports (A.6.4.) per quarter	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Annual Statewide Communication Plans (A.6.1.)	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500
Annual Campaign Evaluation Report (A.6.7.)	\$36,000	\$40,000	\$40,000	\$40,000	\$0
Final Campaign Evaluation Report (A.6.8.)					\$55,000

(2) Media Buy and Placement. Following State approval for each media buy, the Contractor shall negotiate the best possible rates for each and negotiate for free medias as stated in Section A.6.5. For each media buy approved by the State in advance, the State shall reimburse the Contractor for the Contractor's actual net cost of the media buy and shall compensate the Contractor for the media placement in the amount of eight percent (8%) of the Contractor's actual net cost of the media buy. Said payment shall constitute the total amount payable to the contractor for any and all costs associated with a media buy and placement. The Contractor shall not be reimbursed or compensated for any media buy not approved by the State in advance.

(3) Printing/Materials. The State may authorize the Contractor to procure printing services or materials listed in Contract Section A.6.6, the cost of which is not remunerated in accordance with preceding contract sections. In which case, the Contractor shall procure such service(s) or materials on a competitive basis, document the competitive basis and provide the documentation to the State. For each printing service or material approved by the state in advance, the State shall reimburse the Contractor for the Contractor's actual net cost of the service and/or materials and shall compensate the Contractor in the amount of eight percent (8%) of the Contractor's actual net cost of the service or material. Said payment shall constitute the total amount payable to the Contractor for any and all costs associated with a printing service or material. The Contractor shall not be reimbursed or compensated for any printing service or material not approved by the State in advance.

(4) Creation and Production Rates. In accordance with Contract Section A.6.3. and Contract Section A.6.6., the Contractor will design, develop and produce target audience specific non-print and print media. The creative materials in Sections A.6.3. and A.6.6. which have not been included in the Research, Plans and Reports payment rate table are to be paid under the Creation and Production Service Rates. The Creation and Production Service Rates delineate entire compensation for Section A.6.3. Printing and material costs associated with Section A.6.6. are covered in Section C.3.b.(3) Printing/Materials. Remuneration for creative material projects shall be based on a project plan and maximum cost as proposed by the Contractor and approved by the State. The Contractor shall invoice the State at rates not to exceed the applicable Creation and Production payment rate(s) detailed below and the total amount shall not exceed the maximum project plan cost accepted by the State.

Creation and Production Service	Amount per Hour (per compensable increment) April 29, 2008 – April 28, 2009	Amount per Hour (per compensable increment) April 29, 2009 – April 28, 2010	Amount per Hour (per compensable increment) April 29, 2010 – April 28, 2011	Amount per Hour (per compensable increment) April 29, 2011 – April 28, 2012	Amount per Hour (per compensable increment) April 29, 2012 – April 28, 2013
Account Executive	\$85	\$85	\$95	\$95	\$95
Art Director	\$100	\$100	\$100	\$100	\$100
Artist	\$0	\$0	\$0	\$0	\$0
Copywriter	\$100	\$100	\$100	\$100	\$100
Creative Director	\$0	\$0	\$0	\$0	\$0
Digital Pre-Press	\$0	\$0	\$0	\$0	\$0

Film Producer	\$100	\$100	\$100	\$100	\$100
Illustration	\$0	\$0	\$0	\$0	\$0
Photography/Photo Retouching	\$0	\$0	\$0	\$0	\$0
Production Supervisor	\$85	\$85	\$85	\$85	\$85

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Higher Education Commission
404 James Robertson Parkway, Suite 1900
Nashville, Tennessee 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Tennessee Higher Education Commission;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
 - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least forty-five (45) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for

satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to

this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Wendy Tabor
404 James Robertson Parkway, Suite 1900
Nashville, Tennessee 37243
Wendy.Tabor@state.tn.us
Telephone # (615) 532-0409
Fax # (615) 253-8548

The Contractor:

Cecil Walker Norris
President/CEO
5100 Poplar Ave.
Suite 2812
Memphis, TN 38137
cwnorris@walker-assoc.com
Telephone # (901) 522-1100
Fax # (901) 522-1101

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.6. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.7. Intellectual Property Licenses and Releases. The Contractor is responsible for any indemnification issues related to or arising from its undertaking and performance of the Scope of Services; and for obtaining all releases, licenses, waivers, permits, or other permission needed for use of talent, copyrighted or trademarked materials, information, sound, or images, or that are or may be subject to common law or other property rights. The Contractor is solely responsible for any contracts agreements, licenses, releases, fees or negotiations needed to obtain the necessary rights to use of any and all such talent, materials, information images, sound, and property as well as all related administrative and legal expenses. The Contractor's cost to secure and defend intellectual property rights related to performance under the contract shall be included in the firm fixed price contract

E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tennessee Code Annotated, Section 12-7-101, et. seq., shall be printed

unless a printing authorization number has been obtained and affixed as required by Tennessee Code Annotated, Section 12-7-103 (d).

- E 9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Commissioner of Finance and Administration, for such decision and non-competitive procurement.
- E 10. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-317.04-066 (Attachment 6 3, Section B, Item B.13.) and resulting in this Contract. The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF:

WALKER AND ASSOCIATES:

Cecil Walker Norris April 23, 2008
Cecil Walker Norris, President/CEO DATE
Cecil WALKER NORRIS, President, CEO

TENNESSEE HIGHER EDUCATION COMMISSION:

Richard G. Rhoda 5.7.08
RICHARD G. RHODA, EXECUTIVE DIRECTOR DATE

APPROVED:

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT
PERFORMANCE

SUBJECT CONTRACT NUMBER:	332.01-421-09
CONTRACTOR LEGAL ENTITY NAME:	Walker and Associates
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	62-0730469

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Walker & Associates

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Cecil Walker Norris, President / CEO

Cecil Walker Norris, President/CEO

April 23, 2008

DATE OF ATTESTATION